

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUN 19 2002

Michael N. Milby, Clerk

BC

_____	§	
In re Enron Corporation	§	
Securities Litigation	§	
_____	§	
Mark NEWBY,	§	
Plaintiff,	§	
	§	
v.	§	Consolidated Lead No. H-01-3624
	§	
ENRON CORP., et al.,	§	
Defendants.	§	
_____	§	
This pleading concerns:	§	
	§	
PATRICK P. ROGERS,	§	
Plaintiff;	§	
V.	§	C.A. NO. _____
	§	
DAVID BRUCE DUNCAN, et al.,	§	
Defendants.	§	
_____	§	

**ARTHUR ANDERSEN LLP'S MOTION FOR CLARIFICATION
CONCERNING RESPONSIVE PLEADINGS IN *ROGERS* v. *DUNCAN***

Defendant Arthur Andersen LLP ("Andersen"), joined by David Duncan, Kenneth Lay, and Jeffrey Skilling, ("the *Rogers* Defendants") respectfully request clarification from the Court concerning if and when these parties are required to file responsive pleadings in the recently consolidated Enron-related *Patrick P. Rogers v. David Duncan, et al.* In support of these defendants motion for clarification, the *Rogers* Defendants would show as follows:

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A. BACKGROUND

1. On or about January 24, 2002, Plaintiff Patrick P. Rogers commenced this action against the *Rogers* Defendants under cause number GN200240 in the 126TH District Court of Travis County, Texas, by filing his Original Petition. The lawsuit arises from the financial difficulties of Enron Corporation. In his petition, Rogers asserted claims of liability under “Section 10(b), Section 18 and 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78) and Rule 10(b)-5 (17CFR § 240.10b-5) promulgated thereunder, as well as, Section 11 of the Securities Act of 1933. (15 U.S.C. § 77k).” See Pet., ¶ 2.

2. On February 26, 2002, Andersen removed this case to the United States District Court for the Western District of Texas, Austin Division. The case was assigned to the Honorable Harry Hudspeth. Prior to its removal, Lay had filed a general denial in the state court.

3. On April 5, 2002, Andersen filed a motion to dismiss Rogers’ claims.

4. On April 19, 2002, Duncan filed a motion to dismiss Rogers’ claims.

5. On April 16, 2002, Judge Hudspeth entered an order (*Rogers* Docket No. 20) staying the case pending a determination by the Judicial Panel on Multidistrict Litigation concerning whether to transfer this action, along with other Enron-related cases, to one court for consolidated MDL proceedings. Judge Hudspeth’s stay order was effective before any further responsive pleadings were due from Lay and Skilling.

6. After the entry of the stay order, Rogers filed a motion to file an amended complaint. (*Rogers* Docket No. 22). Rogers’ motion to file an amended complaint has not been acted upon by any court.

7. On May 24, 2002, the MDL panel issued its conditional transfer order. Because Rogers was given until June 11 to file any objection, the order was stayed. (*Rogers* Docket No. 34).

8. On June 6, 2002, Judge Hudspeth continued the stay he had previously entered but he ordered the *Rogers* Defendants to “file their answers” by June 20, 2002. (*Rogers* Docket No. 37).

9. On June 11, 2002 and before the *Rogers* Defendants were able to seek clarification from Judge Hudspeth, this case was finally transferred to this Court in the Southern District of Texas.

B. ARGUMENT

10. The *Rogers* Defendants seek clarification for several reasons. First, this Court has issued comprehensive scheduling orders staying all actions except for certain actions of the lead plaintiffs. Thus, under this Court’s prior orders, separate responsive pleadings to the *Rogers* complaint are not currently due. The Court has pending before it a motion filed by Chewco seeking a common scheduling order for all non-class action Enron-related cases. (*Newby* Docket No. 610). So far this Court has not acted on Chewco’s motion. This case - *Rogers* - would be governed by such an order. Unless the Court orders responses pursuant to Chewco’s motion, the actions consolidated under *Newby*, including this action, are otherwise stayed. The *Rogers* Defendants seek clarification whether separate pleadings responsive to the *Rogers* complaint are due at all.

11. Even if the Court directs the *Rogers* Defendants to file responsive documents, Judge Hudspeth’s June 6 Order (1) deprives the *Rogers* Defendants of the right to file a response paper other than an answer as allowed by Rule 12, at least according to the terms of the order, (2) fails to determine which complaint the parties must respond to, and (3) fails to acknowledge the motions to dismiss already filed. If the Court determines that the *Rogers* Defendants must file separate responsive papers (other than

what they have already filed in response to the *Newby* and *Tittle* consolidated complaints), the *Rogers* Defendants seek further clarification on these three issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Hardin", is written over a horizontal line.

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***** Also signing by permission for counsel for David Duncan,
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CERTIFICATE OF CONFERENCE

I certify that on the 19 day of June, 2002, I spoke with plaintiff's counsel, Keith Ward, by telephone. He reports his client is unable to agree to the relief sought in this motion.

Barry G. Flynn by
Barry G. Flynn *Ramzel with permission.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on counsel of record on this the 20 day of June, 2002, according to the Court's orders regarding service in this action.

Andrew Ramzel
Andrew Ramzel